

SERVICE DATE – LATE RELEASE OCTOBER 14, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-364 (Sub-No. 10X)

MID-MICHIGAN RAILROAD, INC.–
DISCONTINUANCE OF SERVICE EXEMPTION–
IN KENT COUNTY, MI

Decided: October 14, 2005

By petition filed on June 28, 2005, Mid-Michigan Railroad, Inc. (MMRR), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 1.50-mile line of railroad extending from milepost 157.97 on MMRR's east-west rail line to the end of the line in Kent County, MI. Notice of the filing was served and published in the Federal Register on July 18, 2005 (70 FR 41256-57). We will grant the petition, subject to the standard employee protective conditions.

BACKGROUND

In a prior proceeding, the Board approved the lease and operation of the line by Grand Rapids Eastern Railroad, Inc. (GRE), from the Central Michigan Railway Company (CMRY).¹ GRE subsequently merged into MMRR.² CMRY continues to own the assets that MMRR operates over, including, but not limited to, the track, ties, ballast, other track material and land. MMRR has no authority to alter, remove or dispose of any of the assets that are on the line.

The Grand Rapids Press (GRP), of Grand Rapids, MI, the only shipper on the line, has stopped using the line, moved its facility to Walker, MI, and, according to MMRR, does not oppose the discontinuance of service. Prior to moving its facility to Walker, MMRR served GRP

¹ See Grand Rapids Eastern Railroad, Inc.–Purchase, Lease and Operation Exemption–Rail Lines of Central Michigan Railroad Company, Finance Docket No. 32297 (ICC served July 26, 1993).

² See RailTex, Inc., Mid-Michigan Railroad, Inc., Michigan Shore Railroad, Inc., and Grand Rapids Eastern Railroad, Inc.–Corporate Family Transaction Exemption, STB Finance Docket No. 33693 (STB served Jan. 20, 1999).

on an as-needed basis. MMRR last provided service to GRP in June 2004.³ There are no longer any active shippers on the line.

According to MMRR, the line is listed as excepted track (although 1.25 miles may be in Federal Railroad Administration (FRA) Class 1 condition) and needs an immediate investment of approximately \$435,000 to rehabilitate the entire line to FRA Class 1 condition. CMRY, as the owner of the line, will determine the line's disposition, subject to any necessary Board authorization for CMRY's actions, if this discontinuance is authorized.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions, and encourage efficient management by relieving MMRR of the costs of maintaining and operating the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is not necessary to protect shippers from the abuse of market power. The only shipper on the line, GRP, has stopped using the line, moved its facility to another location and apparently does not oppose the discontinuance. Nevertheless, to ensure that GRP is informed of the Board's decision, MMRR will be required to serve a copy of this decision on the shipper within 5 days of the service date of this decision and certify to the Board that it has done so. Given the finding regarding market power, it is not necessary to determine whether the proposed discontinuance is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail

³ MMRR transported to GRP 321 carloads of paper in 2002, 347 carloads in 2003, and 145 carloads in 2004.

use requests, or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by MMRR of its operations as described above, subject to the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. MMRR is directed to serve a copy of this decision on GRP within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by October 24, 2005, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,200 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Petitions to stay must be filed by October 31, 2005. Petitions to reopen must be filed by November 8, 2005.

6. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective November 13, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary